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3308

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DATE MAILED: 11/27/95

RECEIVED BY CARD, FAX, OR COMPUTER IN CHARGE OF YOUR APPLICATION
COMMISSIONER OF PATENTS AND TRADEMARKS

8-10-95

This application has been examined. Responsive to communication filed on 7-31-95 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, Form PTO-152
5. Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II SUMMARY OF ACTION

1. Claims 1-4, 6-8 are pending in the application.

Of the above, claims 5 and 7 are withdrawn from consideration.

2. Claims 5 have been cancelled.

3. Claims _____ are allowed.

4. Claims 1-4, 8 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

Election/Restriction

1. Newly submitted claims 6 and 7 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these claims are directed to an extraction tool which does not require the specific combination of the cup of claims 1-4 and 8.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 6 and 7 are withdrawn from consideration as being directed to a non-elected invention. See 37 C.F.R. § 1.142(b) and M.P.E.P. § 821.03.

2. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

3. Claims 1-4 and 8 are rejected under 35 U.S.C. § 103 as being unpatentable over Noiles, et al in view of Creamascoli.

Noiles discloses a hip joint socket including an outer metal shell having disposed therein a antifriction liner. The liner is affixed to the shell by means of a taper lock with the

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angle of taper being in the range as claimed. The use of a ceramic material as the antifriction component is taught by Cremascoli. The ceramic material offers many benefits including low frictional surface, low heat generation and low wear. To replace the liner of Noiles with a ceramic liner for the benefits as outlined supra would have been obvious to one with ordinary skill in the art from the teachings of Cremascoli.

Response to Amendment

4. Applicant's arguments filed 8-30-1995 have been fully considered but they are not deemed to be persuasive.

In response to Applicant's argument that the liner of Noiles is not ceramic does not include certain features of Applicant's invention, the limitations on which the Applicant relies (i.e., the lack of recesses in the liner) are not stated in the claims. Therefore, it is irrelevant whether the reference includes those features or not.

Examiner is simply using Cremascoli as a teaching reference which teaches that a liner may be fabricated from ceramic. As to how this is employed is not of critical importance. The art recognizes the various manners by which a liner may be attached to the inner surface of the shell including glue, molding, adhesive, locking means, mechanical fixation (eg screws) and taper lock between the elements. Since Cremascoli does employ a ceramic liner, Noiles provides the means for attaching the liner to the shell via taper interlock.

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Conclusion

5. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to DAVID J ISABELLA at telephone number (703)308-3060.



**DAVID J ISABELLA
PRIMARY EXAMINER**

DJI
November 24, 1995